IN THE HIGH COURT OF UTTARNCHAL AT NAINITAL

Writ Petition No. 363 of 2004 (S/B)

Avinash Kumar S/o Sri Ram Singh,
R/o Kaustub Bhawan, Sri Gurutej Bahadur Marg,
Nawabi Road, Haldwani, District Nainital. ……. Petitioner.

Versus

1. State of Uttaranchal,
through Principal Secretary,
Department of Education,
Uttaranchal Shasan, Dehradun.
2. State Public Service Commission,
Uttaranchal, Haridwar,
Through its Secretary. ……. Respondents

Mr. Manoj Tiwari, Advocate holding brief of Mr. Alok Mehra, Advocate for the petitioner.
Mr. K.P. Upadhyay, Standing Counsel for the State.
Mr. B.D. Kandpal, Standing Counsel for the respondent No. 2.

Coram: Hon. V.S. Sirpurkar, C.J.
Hon. Prafulla C. Pant, J.

(Per Hon'ble the Chief Justice)

1. Heard Mr. Manoj Tewri, Advocate appearing for the petitioner and Mr. B.L. Kandpal, Standing Counsel for respondent No. 2.

2. In this writ petition, the petitioner has claimed that the persons with inferior merits have been called for the interview for the posts for which he had applied in pursuance of an advertisement issued by the Public Service Commission. It is the case of the petitioner that though he was a better candidate and had better academic record, he was not called for the interview, while some others, with inferior records, were invited for the interview. The petitioner also takes the exception to some 15 persons, who were called for the interview and who were decidedly inferior to the petitioner. Shortly stated, the contention of the petitioner appears to be that the interview calls have been given to a privileged few and in the process, the petitioner has been discriminated against.

3. We have dealt with similar controversy in writ petition No. 342 of 2004 (S/B). There also, some 18 persons, who were having less percentage than the petitioner, were invited for interview. However, it is explained, ultimately, by Mr. B.D. Kandpal, Standing Counsel for respondent No.2, who appeared in that writ petition also that those interview calls were given to the inferior teachers on the wrong reading of clause 15(4) of Uttaranchal Higher Education (Group A) Service Rules, 2003. It was wrongly viewed as if even the visiting lecturers had some right and therefore, they were entitled to be called for the interview and considered for being appointed. There the learned counsel had explained that the interview calls of those 18 persons were, ultimately, cancelled and they were not to be taken into consideration.

4. The learned counsel Mr.B.D. Kandpal points out that there also the same thing has happened and the calls sent to these 15 persons, who were decidedly inferior to the petitioner, have been cancelled. In addition to this, the learned counsel submits that in view of the unusually high number of applications for the posts, a test was derived, firstly, to shortlist the candidates to be called for interview and a formula was devised for assessing the academic merits of the candidates for which the score of the candidate at the intermediate examination, graduation examination and the post- graduation examination was taken into consideration. The formula was to give 20% of the total marks scored at the intermediate level, 30% of the total marks scored at the graduation level & 50% of the total marks scores at the post- graduation level and when these three scores were added up to determine the average of the three examinations, a comparative list was to be created.

5. It is pointed out by Mr. B.D. Kandal that when this formula has been applied, the petitioner is placed at serial No. 157 and all those, who have been interviewed or sent the interview calls, are above the petitioner in merit. We do not find anything discriminatory or arbitrary in devising this formula and applying the same to the present case. If the petitioner was less in score than the ones who are

above him & those others above him in the list have been sent the interview calls and not the petitioner, we do not think that there is any injustice meted out to the petitioner.

6. We have already dealt with the contention regarding the 15 persons, who were, admittedly, inferior to the petitioner because we are satisfied by the statement made before us that those 15 persons have been left out of the area of consideration. No other point was argued before us.

7. In that view, we do not find any merits in this writ petition and the writ petition is dismissed.

(P.C. Pant, J.) **(V.S. Sirpurkar, C.J.)**
24.02.2005 **24.02.2005**

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